

**Trash Removers, Inc. and General Teamsters Local Union 326 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 4-CA-11027**

August 24, 1981

**DECISION AND ORDER**

**BY MEMBERS FANNING, JENKINS, AND  
ZIMMERMAN**

On April 1, 1981, Administrative Law Judge Thomas A. Ricci issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge and to adopt his recommended Order.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Trash Removers, Inc., New Castle, Delaware, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

<sup>1</sup> The General Counsel and the Respondent have excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

**DECISION**

**STATEMENT OF THE CASE**

THOMAS A. RICCI, Administrative Law Judge: A hearing in this proceeding was held on January 5 and 6, 1981, in Wilmington, Delaware, on complaint of the General Counsel of the National Labor Relations Board against Trash Removers, Inc., herein called the Respondent or the Company. The complaint was issued on June 27, 1980, upon a charge filed on April 22, 1980, by General Teamsters Local Union 326 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Teamsters Local 326 or the Union. The issues presented are wheth-

er the Respondent in fact committed a number of violations of Section 8(a)(1) of the National Labor Relations Act, as amended. Briefs were filed after the close of the hearing by the General Counsel and the Respondent.

Upon the entire record, and from my observation of the witnesses, I make the following:

**FINDINGS OF FACT**

**I. THE BUSINESS OF THE RESPONDENT**

Trash Removers, Inc., a Delaware corporation, is engaged in the business of commercial and industrial trash removal at its New Castle, Delaware, location. During the year preceding issuance of the complaint, in the course of its operations at this location the Respondent performed services valued in excess of \$50,000 for firms each of which annually receives more than \$50,000 for selling goods directly to points outside the State of Delaware. I find that the Respondent is engaged in commerce within the meaning of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

I find that General Teamsters Local Union 326 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

**III. THE UNFAIR LABOR PRACTICES**

**A. A Picture of the Case**

In a 3-day period—March 26–28, 1980—13 of the approximately 20 production and maintenance employees of the Respondent signed regular authorization cards for representation by Teamsters Local 326. On April 7 the Union filed a petition with the Board seeking an election in that unit. Within a week after the employees had signed the cards a number of them put their signatures to a statement which said that they no longer wished to be represented by the Union. On April 22 the Union filed the charge in this case, alleging that the Respondent had engaged in illegally coercive conduct against its employees upon learning of their prounion activities.

The complaint lists a number of acts, all allegedly committed by Frank Piluso, the Respondent's general manager, as violations of the statute: Interrogations, threats of reprisals, solicitation of grievances, etc. The only section of the statute said to have been violated is Section 8(a)(1). There is much repetitive language in the complaint, creating an artificial picture of multiple violations where in fact the same incidents, or phrases, are merely restated. The complaint also speaks of employees' having been told that they were discharged because of their union activity, but there is no contention, in the complaint or otherwise, of any violations of Section 8(a)(3). At the hearing the General Counsel sometimes said that an employee was fired with an illegal motive, and sometimes said that he was not making that contention.

As in most cases of this kind, there is much dispute in the testimony as to exactly what the manager said, or did, during the critical period in question—Piluso denied

much of what the General Counsel's witnesses attributed to him, and employee witnesses gave conflicting testimony among themselves and even changed their individual stories as they went from direct examination to cross-examination. However, the real issue of this case goes to something else. The complaint alleges that the Union in fact represented a majority of the employees in an appropriate unit when the manager took steps to put a stop to the union activities. It does not allege that the Union demanded bargaining rights, that it was refused recognition, or that there was any violation of Section 8(a)(5). Nevertheless, the complaint requests, to remedy the 8(a)(1) violations that were committed, that the Respondent now be ordered to bargain with the Union upon request.

The Respondent denies the commission of any unfair labor practices. It also disputes the appropriateness of the bargaining unit as defined by the General Counsel, raising issues as to its correct composition, and disputes the asserted majority representative status of the Union.

This is essentially a *Gissel* type case.<sup>1</sup> The primary issue is whether the Company committed such egregious and outrageous unfair labor practices that it must be found that a fair election can no longer take place and that an immediate order to bargain is warranted even without an election among the employees.

#### B. The Evidence—Analysis

As will be detailed below, I find that Manager Piluso did commit a number of violations of Section 8(a)(1) in his reaction to the employees' union activities, but I also find, upon evaluation of the record in its entirety, that the unfair labor practices in this case are not of such a nature that it necessarily follows that there cannot be a perfectly proper Board election, after the posting of the usual notices, if the Union cares to pursue the representation proceeding. In the circumstances, whether the Union in fact ever represented a majority in an appropriate bargaining unit is of no moment. That question becomes academic when no affirmative bargaining order is involved. Nevertheless, in the interests of clarity, I shall forthwith determine the Union's status.

#### C. Majority Status

The parties stipulated that during the day on March 31—i.e., before evening—there were 19 rank-and-file production and maintenance employees working for the Respondent. There is a dispute as to four of these.

*Peter Madic and Robert Gardner:* Madic is a brother of Mr. Piluso's wife, and Gardner is the husband of Mrs. Piluso's sister. The Company would exclude these two men solely on the ground that they are related to the general manager. I deem the argument without merit and find both of these men to be properly counted in the unit. The basic theory underlying those decisions in which the Board has excluded relatives of the boss is that they are shown, by the record, to be aligned with management, as distinguished from being antimanagement or prounion. That is why it is always the union that requests their exclusion. Here, there is not a scintilla of

evidence indicating either exercise of managerial authority by these two men, or such treatment of them as to give rise to a presumption that they would be prejudiced against the Union. Indeed, the record shows exactly the opposite. Madic and Gardner were among the more active protagonists in favor of the Union. If the record clearly shows anything it is that they were absolutely antimanagement.

*Lawrence Horwath:* The General Counsel would exclude Horwath on the ground that he was a clerical employee at the end of March. The Union adds the argument that he was also a supervisor at that time. Horwath worked as a regular truckdriver when he was hired in 1976. He continued so working until January 1980 when he became disabled and went on leave for a month. He returned late in February to do only "light-duty," work, as he testified without contradiction, because of his continuing illness. On April 28 he had to leave work again and stayed out sick until September when he returned to his regular truckdriving chores. During March and April he did all kinds of things—picked up and delivered refuse containers, answered the phone, and ran all kinds of necessary errands—and reported for work as early in the morning as did all the other rank-and-file employees. The exclusion contention rests primarily upon the testimony of Madic, whose story is greatly colored by his obvious distaste for Horwath. Among other things, Madic said that Horwath occasionally did dispatching, like the regular dispatcher, June Williams: "I don't think there was any difference. I think he acts just as cute as she does . . . just as snotty; same type of attitude." During the interim period when he performed light-duty work Horwath did a route analysis job. This involved riding on a truck along a scheduled route with a regular driver recording the time and location of all stops. It is a function that is performed every 6 months or so. Without need to go into details, the evidence shows clearly that others also did this work at times, including other regular drivers who were named on the record. It is undisputed that other than the foregoing Horwath never exercised any supervisory or managerial authority at all. I find that he is to be included in the unit count.

*Lowell Schoonmaker:* This is the only certified welder in the welding shop. Others sometimes work there doing sanding or painting as helpers to Schoonmaker, who earns \$2 more per hour than the rest because of his special expertise. Again, it is admitted that he does not have, and never had, any authority to hire or fire anyone, to schedule work, to issue reprimands, or to in any manner exercise supervisory authority. I find, over the objections of the General Counsel, that Schoonmaker, too, is to be included in the unit count.

This means that 13 out of 19 employees had authorized the Union to represent them by the morning of March 31. The Company would include, over the objections of the other parties, four other employees. *Chuck Williams* first worked for the Respondent starting at 11 p.m. on March 31. *L. S. Netta*, *John Netta*, and *Duane Robertson* first started working for the Respondent the next day. Were I to add these four, the Union would still be shown to have had a majority during the day of March

<sup>1</sup> *N.L.R.B. v. Gissel Packing Co., Inc.*, 395 U.S. 575 (1969).

31—i.e., 13 cards out of a total of 23—but I find that these 4 men ought to be excluded insofar as this case is concerned. Other than Piluso's unsupported statement that he had arranged before that time to hire these men, there is no probative evidence to that effect. None of them appeared at the hearing. Given Piluso's antiunion activities of March 31, as related below, before any of these four men started to work, I cannot deem his self-serving, conclusionary statements on this point convincing.

I find that on March 31 the Union was authorized to act as their bargaining agent by a majority of the employees in the appropriate bargaining unit.

#### D. The (a)(1) Violations

Madic was among the two or three employees who started the union campaign in the first place, and, as stated, all 13 cards were signed by March 28. In the afternoon of March 31 Piluso posted a notice calling employees to a meeting in the conference room that evening. It seems that most of the employees were there. At the hearing Piluso said that he took this action because he had heard "rumors" of union activity. The first thing he did, in facing the employees that evening, was write in large letters on a blackboard the words, "Union—Pete—Doc." "Pete" was Madic, and "Doc" was a nickname for Gardner. My first finding, of course, is that Piluso called that meeting for the precise purpose of confronting the employees with his reaction to their union activities. Whatever he said or did at that meeting must therefore be viewed as intended to pass a very pointed message. With this his first act that night as a starter, the attempted explanation of the meeting, both during cross-examination of employee witnesses and in the Company's brief, as no more than a recurrence of an old custom of listening to the gripes of employees once a month fails. Piluso also said later in his testimony that he had no idea that evening that any one at all had signed cards in favor of the Union, and that he only learned about that the next day. The simple fact that he so dramatically pinpointed two principal activists by name effectively contradicts that belated assertion. His statement at the hearing that he picked these two names out of the many for such emphasis only "to clear my family name" is irrelevant to the fact that he revealed to all his personal knowledge as to who the main unioners were.

That evening meeting on March 31 lasted about an hour and a half; there was continuing argument, much of it in antagonistic tone, between Piluso and several employees over a number of conditions of employment. Of the employees then present, three testified in support of the complaint and four on behalf of the Respondent. As was to be expected, much of the testimony is couched in conclusionary terms, impressions received, and paraphrasing of words spoken by others. However, one thing is clear, both because of the total record and because Piluso did not really deny it, and that is that Piluso asked the employees to speak up as to what had caused the union movement to come about at all.

Madic's beginning testimony was that, as soon as Piluso had written the two names on the blackboard, he asked the group, "Is that about right . . . what do you

think a union can do for you that I can't?" As Bacot, the next employee witness, recalled it, Piluso asked, "[I]s that about it?" When Bacot said that it was he and Madic who had "started it," the manager continued with, "[W]hat can a union do for you that I can't."

At this point a long discussion took place between the manager and the employees about a number of aspects of the conditions of employment with which the employees were dissatisfied and which they wanted changed. Before considering the testimony as to the general discussion, I find that, by telling the employees that he knew who two of the union ringleaders were, by asking, obliquely, who the others were, and by soliciting their grievances at that moment for the purpose of attempting to dissuade the entire group from their pronoun resolve, Piluso, for the Respondent, violated Section 8(a)(1) of the Act. The manager did not deny asking the assembly whether he had correctly identified the ringleaders. This was but an indirect way of asking them whether there were others personally involved, and, pursuant to the manager's request, Bacot answered him with more precise information. It was illegal interrogation pure and simple. *Keller Manufacturing Company, Inc.*, 237 NLRB 712, 731 (1978). It also passed on a direct message of surveillance. Further, of course, when Piluso invited all to voice the grievances which had led them to join the Union, he was without question getting the idea across that he would do what he could to satisfy their demands, and thereby achieve his purpose of killing off the union campaign.

Among the improvements the employees asked for were: (1) job security; (2) more vacation time; (3) better holiday pay; (4) no more mandatory hours; (5) a dental plan; (6) safety equipment; (7) replacement of the existing incentive system of pay with regular hourly rates assuring them of a raise from \$6 an hour to \$8 an hour; etc. Piluso responded during the hour and a half of talk on these subjects, but there is a serious conflict in testimony as to what he said. Before looking closely at the diversified testimony of what was said during the general meeting in the conference room, however, it is important to clarify a very confusing element, thrown into the case by the General Counsel, about other things that happened that same day. As already stated, there is no 8(a)(3) allegation anywhere in the complaint. Yet the General Counsel offered evidence now said to prove that two employees were illegally discharged on March 31—Bacot and Estep. I do not find that the so-called evidence of unlawful intent in Piluso's treatment of these two men suffices to satisfy the affirmative burden of proof resting upon the General Counsel if he really intended to prove prohibited discharges.<sup>2</sup> If anything, the manager's ultimate attitude towards them tends to lessen the effect of what violations of Section 8(a)(1) he did commit.

<sup>2</sup> At the hearing the General Counsel equivocated as to exactly what his contention was. First he said that the illegal act with respect to Bacot was "[n]ot to lay him off." He followed this by contending "that the lay off of that man was illegally motivated." Moreover, a major part of his brief spells out a very comprehensive case against the Company alleging that both Bacot and Estep were actually fired because of their union activity.

March 31 was a Monday, the first day of the work-week. In the afternoon at the end of their shifts, the timecards of Bacot and Estep were removed from the rack. At the hearing Piluso testified that he decided to release Bacot because the driver whose departure had occasioned Bacot's hiring in the first place had returned and there was no longer a need for him. In fact, he told Williams, the dispatcher, to so inform Bacot and, when she did tell him at the end of his shift that he was "terminated," he made no comment; he just sat and "finished [his] coffee." When he was finished, he went to Piluso's office to talk about it and the manager said that it was because "we just don't have work for you." As to what was said after that, Bacot and Piluso disagreed at the hearing.

With respect to Estep, Piluso's contention is that he had Estep's timecard removed because he had been hired for a special delivery job which had almost been completed, and therefore he had to be laid off. Estep noticed his card was missing from the rack after he had finished for the day, but did nothing about it; he just went into the group meeting as did all the rest. After the meeting ended, Piluso spoke to these two men in his office but, before reaching those encounters, it is necessary to mention something else that was said on this subject during the meeting in everybody's presence.

In the heated arguing as Piluso was accused of treating the employees badly, Madic was the most vituperative and outspoken. When Piluso at one point asked for "one example of something bad that I have done to one of you guys," Madic told his brother-in-law, "[Y]ou laid this man right here off, Mr. Bacot. He hadn't done a thing wrong to the company; he's a good worker, a good driver, and I said, why did you lay him off." To this the manager's answer was, "I want to talk to Mr. Bacot after this meeting."

After the meeting Piluso met with Bacot in his office, and, according to Piluso, "I told him I would forget the fact that I did lay him off, that I wanted him to report to work the next day." Asked why he did that, Piluso testified that it was because "I didn't want anybody feeling that I laid him off because of the movement." Bacot never left and never lost a moment's pay; he was still on the job at the time of the hearing 10 months later.

Estep's story continues that when, during the group meeting, he learned that Bacot had been fired, it occurred to him that perhaps the reason that his card was missing from the rack may have been because he, too, was discharged, and that therefore "I went to Frank [Piluso] . . . and asked him why my card was missing." What this statement clearly shows is that up to that moment, after the employee meeting had been concluded, Estep had never even for a moment thought that he had been discharged. However, Madic testified that earlier, in the afternoon at or about 4 o'clock, he had gathered some employees in a nearby bar to discuss their problems because Bacot had told him that he and Estep "had gotten laid off." The question is, if Estep had no such idea, how could Bacot have had it? These witnesses were not telling the truth at the hearing.

As in the case of Bacot, Estep, too, was told by Piluso that he was being laid off, but in his case it was because

the manager understood that Estep was returning to his regular job at General Motors. Further, before it was over, again as with Bacot, Estep also was told that he could stay if he wished, and he did, notwithstanding that he went back to work full time at General Motors the next morning. He continued to work for the Respondent as a part-timer for 2 more weeks and then decided to quit altogether.

Both Bacot and Estep quoted Piluso as having voiced antiunion sentiments during their talks with him that day. Piluso denied that there was any mention of the Union at that time. All things considered, I believe him instead of them.

According to Bacot, after Piluso told him that the reason for the discharge was because there was no work for him, he argued seniority and Piluso answered, "Seniority only counts in a union shop . . . It's not a union place and it's never going to be a union shop." As they talked, still according to Bacot, he volunteered, "[I]f this is about the card I signed, every driver in here signed these cards." Piluso then asked, as Bacot would have it, "[W]ho approached you to sign it," but Bacot refused to say. In the end, still according to Bacot, Piluso told him, "[W]ell, you're laid off . . . keep your nose clean and we'll be calling you back in a couple of weeks."

Estep gave two versions of his talk with Piluso about his missing card. The first was, "I went to Frank [Piluso] . . . and asked why my card was missing." Later the witness testified that Piluso said to him, "You were laid off . . . that's what I want to talk to you about." Was it he who started the conversation with the manager, or was it the manager who called him to discuss his status of the moment? On another, more significant point, Estep's testimony changed still again. A group of employees had decided, before Piluso's talk to the group in the conference room, to meet and discuss the union business at Estep's house that night. Estep first testified that Piluso said to him, "I understand you had a meeting set for your house," and the employee answered, "Yes." Later the witness said, "I just told him we planned on having it at my house." One of the elements of the inference case urged by the prosecution is that Piluso knew of the planned union meeting at Estep's house, and that that was why he removed the man's card from the rack and, indeed, even why he held the mass meeting of employees at that time. However, if Piluso knew about it, why did Estep have to tell him it was set for his house as his second version reads? This sort of change in testimony does not enhance a witness' credibility.

Next, it is a fact that Bacot had been hired initially to replace a driver who had left, that the driver had returned before March 31, and that thereafter Bacot had been assigned a variety of duties to keep him busy. Indeed, after Piluso changed his mind and decided to let him stay, Bacot was put "on a rotating shift, driving a different route every day," in his own words. This statement lends credence to the assertion that there was really not enough work for him at the time.

It is also a fact that Estep had been hired for a particular job that had to be done and for which he had special experience. Piluso's statement that the job was almost

completed stands uncontradicted. More important is the further fact that Estep was working for the Respondent only while waiting to be recalled at General Motors. Piluso testified that during the employee meeting there was a telephone call for Estep, and that Estep stepped out of room to take it. Later, when the two were talking in the office, Estep said, still according to Piluso, "I suppose you're wondering what that phone call was about," and, when the manager said that he thought it was the driver's wife, Estep said, "I might be getting my job back at General Motors." It was at this point, as Piluso said, that he told Estep, "[T]hat's great, because I was thinking about laying you off anyway." Estep denied this part of Piluso's story, or having received any call during the meeting. However, both witnesses agreed that the phone rang while the two were talking; it was Estep's union representative at General Motors, who told him to report for duty at General Motors the next morning. Estep also said the union agent "had been trying to get a hold of me all day long," but that this was the first that he heard of any possibility of going back to his regular job.

The picture must be taken in the total context, including all related factors, even on this question of credibility. If Piluso's purpose in laying Bacot off in the first place was to intimidate the rest of the employees, the last thing he would do, during the very meeting he called to put that point across, would be to take Bacot back. Indeed, the General Counsel could just as well argue that, by reversing himself and extending a courtesy to Bacot at the request of the employees, Piluso was giving a benefit, a bribe to induce abandonment of the union movement. On this record, this would be a better theory of illegality. The very fact that the Company did not harm Bacot at all serves more than anything else both to defeat the allegation of wrongdoing and to credit the manager's testimony. Moreover, for Piluso to testify, as he did at the hearing, that the reason that he changed his mind about Bacot was to offset any thought of union animus in the minds of the employees was the most reasonable and persuasive statement of all. The implied suggestion that, by this statement the manager obliquely admitted illegal intent, is the purest circular reasoning.

The same reality applies to Estep. If Piluso had decided to get him out of the place just to weaken the Union's strength, why would he favor Estep by letting him stay on, as a personal courtesy, as long as he wished? When Estep left 2 weeks later it was because he chose to go, not because the Company ordered him out. It is a mixed-up story that does not hold water. I make no finding of illegality in anything the Respondent did with respect to either Bacot or Estep.

We now revert to what happened during the employee meeting in the evening of March 31. The testimony as to what was said there must be appraised together with further talks Piluso had with a number of employees during the next workday and also in his home on the evening of April 1. In the morning of April 1 Piluso called Thomas Tucker in Illinois; Tucker is the employee relations manager of Waste Management, the parent organization which owns the Respondent. Tucker came to Piluso's house in Wilmington where Piluso talked to him during

the day. Later, in the afternoon, Piluso invited a number of employees to his home for a meeting; about nine went there that evening where both Piluso and Tucker talked with them. There is a relationship between what was discussed at each of the two evening meetings.

The principal witnesses for the General Counsel as to the March 31 meeting were Madic, Bacot, and Estep. Their testimony as to Piluso's words kept changing, was often couched in conclusionary phrases, or was even inconsistent among themselves. No useful purpose would be served by detailing here everything they said—it was so repetitive and vague on direct examination. It will be the substance that governs. Some things are clear. (1) Piluso did ask them to state their demands. Witness Brinton, called by the Respondent itself, testified: "What was said was that he [Piluso] thought that, you know, the men should get together and you know decide what they thought they wanted and they could talk about it." (2) The manager said that he would leave the Company by resigning if the union movement persisted. (3) There was talk about a possible strike, and in connection with that Piluso said that the Company would, in that event, find a way of bringing strike replacements from other branches of the parent company to keep Respondent's branch going. (4) Piluso told everybody that with a union contract in effect he would no longer be able to favor his relatives, and ignore their misconduct or derelictions of duties; that is, enforce the working rules uniformly as to the total group while permitting employees like Madic and Gardner to do as they pleased. Beyond this, there is conflict.

Did Piluso threaten to fire employees because of their union activity? Did he threaten to fire them if they struck? Did he threaten to take away the benefits they had in pure retaliation? Did he say the Respondent would under no circumstances sign a union contract? Did he promise them outright improvements in working conditions? The burden of the testimony of most of the prosecution's witnesses was to establish affirmative answers to each of these questions. Piluso denied every one of the conclusionary assertions. Considering all of the testimony I do not think the record warrants the positive findings against the Respondent which the complaint seeks on these particular allegations.

On direct examination Madic quoted Piluso as saying, "They can't afford \$8 an hour, that they would shut down the doors, shut the Company down . . . If you guys want to strike . . . you guys would never get your jobs back. . . . If the union came in, we would close the doors." When another employee complained that the dispatcher, Williams, issued too many reprimands, Piluso said, still according to Madic, that he would put a stop to that and thereafter only he would consider issuing any reprimands. As to the incentive system of payment, the witness recalled Piluso's answering by saying that he would discontinue that system for a month and try a straight hourly pay in its place, and that, if at the end of such a trial period it did not cost the Company more, he would leave it that way, but, "We [he] would never agree to a union contract." Piluso further stated, according to Madic:

[I]f the Union gets in here, you guys are going to lose your uniforms, we're going to take away your uniforms, we're going to take away your Blue Cross, we're going to throw the pension right out the door and he pointed toward the door and he says, your uniforms, your Christmas bonus, the Company's going to take away your Christmas bonus and . . . that's all I remember from that.

The trouble with this is that Madic's testimony also contains the following:

Q. Mr. Piluso said, did he not, that if the employees went on strike, that he would bring in drivers from elsewhere to perform the duties?

A. That's correct.

Q. And therefore that the Company would continue to operate?

A. That's correct.

Q. He never said, did he, Mr. Madic, that he would fire all of the employees?

A. No, he never said that.

Q. With respect to your request . . . that the employees receive \$8 an hour as opposed to what they were making . . . Mr. Piluso's response was that the Company could not afford to pay that; is that correct?

A. Correct.

Q. So he did not promise you a wage increase; did he? At the March 31 meeting?

A. . . . no, he didn't promise a wage increase at that meeting, no.

Q. . . . do you remember Frank Piluso saying to you in connection with the wage discussion, that corporate makes these decisions and he couldn't promise you anything?

A. Yeah, his hands were tied.

After Madic's repeated statements that the manager made clear that he would close the doors—"We wouldn't even look at a contract"—came the following:

Q. Again, with respect to the work rules, you do then recall Mr. Piluso stating that if the union came in with a contract, I'd have no alternative but to follow all the rules strictly.

A. I remember that.

Q. He said the union would force him to follow the rules and the contract?

A. No, he said that the union would document everything.

Q. Document everything?

A. Everything would be documented by the book.

Q. And . . . did he not state to you and Doc, who I believe is Mr. Piluso's brother-in-law, that if the union came in, he couldn't give you preferential treatment anymore?

A. Not in those words.

Q. What did he say?

A. He said he wouldn't be able to protect his family any more . . . Exactly what he said—

Finally, Madic admitted the following:

Q. Do you ever recall Frank saying in response to something you said that no, you don't have to worry about your job, the people that were involved in getting the Union together three or four years ago didn't get fired and you won't get fired either?

A. He did say that.

On direct examination Bacot quoted Piluso as saying:

If you want \$8 an hour, this company cannot afford it. They'll close the doors. Frank said, he says the union comes in, your pension plan will go out the door. He said we'll do away with the uniforms. . . . He says your Blue Cross will go, he says we'll cut your hours down to 30, put two new trucks on the road, and get rid of a couple of drivers. He said we'll cut out the Christmas bonus. . . . He said that would go.

At variance with such testimony of direct threats, this witness then recalled Piluso's saying:

Everything will have to go by the book.

Q. Do you remember Mr. Piluso stating that if the union came in, there would be a contract and that he would have to go strictly by the rules?

A. Yes sir.

Q. Do you recall him stating that he couldn't protect Doc and Pete anymore?

A. Family, yes, sir. . . .

Q. Do you remember him saying that he would have to negotiate with the Union?

A. He said he didn't want somebody, meaning the union, to come in and run his company. He didn't like an outsider holding on to his company.

Q. Once again, do you recall him stating that he would have to sit down and negotiate with the Union?

A. Yes, sir.

Like the other witnesses before him Estep, too, started by saying that Piluso told the men:

[T]here was no union going to come in here and tell him how he was going to conduct or run his business and that he would shut the place down, lock the doors or whatever have you, and that if the union got in there, there was no way that he could no longer protect his family.

Then his testimony continued:

Q. Do you recall Mr. Piluso stating that, in response to Mr. Madic's question about getting \$10 an hour and more benefit[s], that the Company must take a profit in order to operate?

A. Every company would have to; yes, every company would have to make a profit.

Q. And that he said, if we don't make money, we couldn't keep the doors opened?

A. That's correct. I do remember him saying something to that accord, yes.

Q. Do you recall Mr. Piluso stating that corporate makes the decisions about wages and that he couldn't promise you anything?

A. That's correct; yes. He did say that, he had supervisors above him.

Q. Do you recall Mr. Piluso stating that if the union came in and we got a contract, that we'd have to go by the book?

A. Oh, yes; he made that statement.

The testimony of other employees who were present supports these latter admissions by the first witnesses that Piluso really did not promise increases or threaten to take benefits away but only said that everything would have to be negotiated with the Union if the employees so chose. Brinton recalled the manager's saying:

[I]f it came to a bargaining type situation, that benefits would have to be negotiated for . . . A uniform plan and our pension plan and you know, different things like that. They would all have to be worked out . . . that's all something that would have to be negotiated.

Employee Robert Ward testified:

Mr. Piluso explained that the company benefits that we now have would all be negotiable if the union did come in, and several points were made about union pensions. Mr. Netta [an employee] brought up the fact that he had paid so much money into a union pension for years and didn't get a dime out of it.

Q. Was there any discussion about work rules or a contract?

A. Yeah, Mr. Piluso stated that if the union did come in, everybody would operate according to the rules of the contract and he wouldn't be able to protect certain drivers after that.

Robert Gardner testified:

Q. Any discussion about following rules or going by a contract?

A. Well, there was talk about if the Union got in, we would have to be regulated by the bylaws of the Union. We would have to go by the book.

Q. Did Mr. Piluso say he'd never agree to a contract?

A. He said it would have to be negotiated; the contract would have to be negotiated.

I read the total record as showing only that the manager, albeit it was he who invited the men to voice their grievances, did nothing more than say that their demands would have to be considered by higher authority, and that assuring them of any improvements was beyond his authority. I also find the evidence insufficient to prove that he told them that they would lose any present benefits, or lose their jobs, if they persisted in their prounion resolve. The talk was about unions and about union con-

tracts. For Piluso to tell them that if the Union came in there would have to be bargaining and negotiations with the Union about any and all conditions of employment was a perfectly proper thing to say. I credit his version on these subjects, supported as it is by the testimony of some of the employees who were present.

There was talk about a possible strike. According to Madic, it was Piluso who brought up that entire subject, and who also said that the men "would never get your jobs back." Incredibly, Estep, present all the time, testified there was no mention of strike at all throughout the meeting. He was lying outright. Brinton, instead, who was also present, quoted Madic as saying, "[I]f we didn't get a union or we didn't get a wage increase, that the company wouldn't be able to operate because . . . there would be pickets at the end of the driveway, they would throw nails in the driveway." Ward gave like testimony, "Mr. Madic said that, well, if we don't get what we want, we'll go on strike and stand out front and close the doors on the place."

As the talking went on Piluso did speak of how the Company would defend against any strike, how it would bring strike replacements from other of its operations, and he even pointed to some men sitting there who had gone to other facilities of the parent company precisely to work as strikebreakers. If, then, he also said, as some employees recalled, that possible strikers might in the end lose their jobs as a consequence, he was articulating no more than the sometimes unfortunate realities of industrial strife. However, there was no rational reason at that moment for him to have started talking about a strike to the employees given their mood of that moment.

I also make no finding of illegality in Piluso's telling the employees that he would quit rather than work with a union in the place. In fact, there really is no contention that by that threat he also committed an unfair labor practice. He was not an owner, but just a plain employee, even though in charge as the Respondent's manager.

A more intriguing idea advanced by the General Counsel is that Piluso violated the statute by reminding the entire group that his past favored treatment of Madic and Gardner, his close relatives, would have to stop under a union contract because a union demands that all of its members be treated alike. To place this statement of the manager into the ambit of Board precedent, the General Counsel ties it with Piluso's collateral statement that with a union he would have to "go by the book." Was this a broadside threat of "more onerous" working conditions, to quote a classic phrase? Piluso used this phrase when responding to the request for improvement (a raise) in working conditions generally, making it clear that changes of any kind would have to be according to negotiations with a union and in keeping with a union contract or a "book." I think it best to leave this particular allegation without further comment. I find that Piluso did not commit an unfair labor practice when he told his relatives that they could count on being treated no different from anybody else once all of the employees were covered by a union contract.

On April 2, in the manager's office, employee Brinton wrote out in longhand a letter addressed to the Union. It reads as follows:

Dear Sirs,

We, the undersigned, do hereby wish to express our desire to withdraw ourselves from the authorization list. We do not wish to be a member of your union.

Brinton wrote this while sitting in the company of Piluso and four or five other employees; five of them signed the letter then and there. The letter was then left on a table in the lunchroom where, during the next 2 or 3 days, five other employees signed it. Whose idea was it that this letter be written?

A number of employees testified that Piluso suggested it in the first place, and the manager admitted in his own testimony that in fact he did advise them as to procedure. However, to offset the complaint allegation that by such conduct he again violated Section 8(a)(1) of the Act, Piluso defended on the ground that it was the employees who started it all by asking how they could get out of the Union. I find, in light of all the related evidence, that it was the manager who put the idea into the minds of the employees that they should make a written record of their rejection of the Union. At the hearing Piluso drew a distinction between the idea of withdrawal and the steps towards that end. In the circumstances of this case, it is an attempted refinement that will not do.

Although the probative evidence does not suffice to prove that Piluso made any direct threats of reprisals, nothing could be clearer than the fact that his purpose in holding the March 31 meeting was to prevail upon the employees to give up the idea of having a union altogether. It is a play on words to say now that the very idea was born in the minds of the employees. The manager wanted to check and to find out who was behind the movement, and he made it clear that their demands—their real reason for going to the Union in the first place—would be satisfied one way or another, even if not by Piluso himself. He did not hesitate to commit unfair labor practices in that form. For him to help them move in his direction, and to supply the details on just how to go about it, was no more than further implementation of his antiunion motivation.

It may well be that during the March 31 meeting—where he said he would quit if the group persisted against his wishes—some of them had second thoughts. In fact, the two relatives, Madic and Gardner, who were told that they would no longer be permitted to violate the rules with impunity, even signed the antiunion petition later. However, that Piluso was the motivating cause that triggered the letter cannot be questioned.

When Tucker, the parent company's employee relations manager, arrived at home on April 1, Piluso asked him, the expert, how the employees could document their rejection of the Union. He had called Tucker for that very purpose, and Tucker told him. Back in the plant he then talked to Madic. Piluso testified, "I said, I found out it's a possibility that you might be able to get a petition up . . . if you do something like this, I want to

know nothing about it, and it cannot be done in my office." Nevertheless, it was done in his office the next day and he certainly knew about it.<sup>3</sup> To press the message further upon the more receptive employees, and to encourage them all the more to take the necessary steps, Piluso invited a number of them to his house that evening—April 1—so that they would have the added benefit of Tucker, the personnel man. He said that he invited them individually and, very significantly, all of the nine or so who showed up were by that time disposed to agree with him. None of the four real unionneers—Madic, Bacot, Gardner, and Estep—was there.

The unfair labor practice finding here is bolstered by the testimony of Tucker, who said that, when Piluso called him to ask for help, he spoke of "the fact employees sometimes may initiate a petition to—in an effort to reverse the card signing." He added that he gave the same advice to the employees in the evening in Piluso's house. To hear him tell it, one would believe that every one of the employees chose, on his own, to gather at the manager's house in order to get out of the Union. Why should they do that? If their desires had changed, all they had to do was nothing at that time and vote against the Union in the election they knew the Union was planning. Besides, Tucker's explanation ignores the fact that it was Piluso who personally invited the men to his house.

Several men testified about the talking that went on during April 1 and 2. The most vocal, called by the Respondent, was Brinton, the man who personally wrote the antiunion petition. His testimony was at times confused, he avoided direct answers, and he had Madic signing the petition during the evening meeting in Piluso's house while saying clearly that he never wrote it until the next morning. There is uncontradicted testimony that he threatened a number of employees to get them to sign his petition. I do not credit Brinton.

I think that the most reliable statement of what happened in the manager's home was given by employee Edward Thompson:

Mr. Piluso asked Mr. Tucker if we drew up a letter and had all the drivers sign it, and brought it to the local, that we did not want representation, that that would get the cards back.

Q. And what did Mr. Tucker say about that?

A. He said there was a slight chance, but it was worth a shot at taking it . . .

Q. Did anybody else have anything to say about this letter?

<sup>3</sup> As set out above, Madic was, generally, not a very credible witness in this case, but on this question of the letter, or "petition," to the Union, he must be believed. He testified that among the many things Piluso said at the March 31 meeting was, "[Y]ou can all write up a piece of paper saying that you don't want the union." With Piluso himself admitting that he told the men about "a possibility . . . to get a petition up," there can be no question as to where the idea of the petition was born. I cannot believe Piluso's story on this aspect of the case. Later in his testimony came the following:

Q. Did you suggest to the employees at the meeting that they submit a letter to the Union?

A. I never suggested anything to the employees.



A. . . . it was brought up, the fact that it would be better if—I believe it was Mr. Tucker that said it—it would be better if an employee did write the letter. Bill Brinton jumped up and said that he would write the letter out.

The Respondent ran afoul of the statute because it ignored the basic principle that the employer must keep its hands off the union activities of its employees—they have a right to act as they choose free of biased meddling by the boss. This is what is meant by employer interference with the freedom accorded by the statute to all employees. *Craftool Manufacturing Co. and Craftool Company, subsidiaries of Tandy Corporation and Tandy Craftool Mfg. Co.*, 229 NLRB 634 (1977). I find that by urging its employees to rescind their authorization of the Union, and by assisting them to prepare a withdrawal letter, the Respondent violated Section 8(a)(1) of the Act.

#### IV. THE REMEDY

As always the Respondent must be ordered to cease and desist from again committing the kind of unfair labor practices that have been proved. It must also post notices assuring the employees that they will hereafter be free from such illegal and coercive conduct by their employer.

As to the affirmative bargaining order requested by the General Counsel, I do not think that the unfair labor practices proved on this record justify such an extreme remedial order. Virtually the sole agent of the Company who made any coercive statements was the manager. With Madic, the principal witness on behalf of the Union, himself admitting that, in the midst of the hullabaloo, Piluso assured the employees that no one would be discharged in consequence of their union activities, it could hardly be said that an untrammelled election cannot take place tomorrow. This, to say nothing of the fact that the manager deliberately reversed his decision to lay off another employee, Bacot, for the purpose of dispelling any impression in the group as a whole that management intended actually to hurt them economically.

#### V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### CONCLUSIONS OF LAW

1. By coercively interrogating its employees concerning their union activities, by creating the impression of surveillance of their union activities, by soliciting grievances from employees for the purpose of dissuading them from continuing their prounion activities, by urging employees to sign an antiunion provision, and by assisting

them in the preparation of such a petition, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

2. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>4</sup>

The Respondent, Trash Removers, Inc., New Castle, Delaware, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating its employees concerning their union activities, creating the impression that it is surveilling its employees' union activities, soliciting grievances for the purpose of dissuading employees from their prounion activities, urging employees to withdraw their union authorization cards, proposing to its employees that they sign an antiunion petition, or assisting its employees in the preparation of an antiunion petition.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form, join, or assist General Teamsters Local Union 326 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Post at its place of business in New Castle, Delaware, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of said notice, on forms provided by the Regional Director for Region 4, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 4, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

<sup>4</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>5</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS HEREBY RECOMMENDED that the complaint be, and it hereby is, dismissed with respect to all other allegations of unfair labor practices contained therein.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board having found, after a hearing, that we violated the law by committing unlawful coercive acts against our employees:

WE WILL NOT coercively interrogate our employees concerning their union activities.

WE WILL NOT create the impression among our employees that we are surveilling their union activities.

WE WILL NOT solicit grievances from our employees for the purpose of dissuading them from their prounion activities.

WE WILL NOT urge our employees to withdraw signed union authorization cards.

WE WILL NOT propose to our employees that they sign an antiunion petition or help them in the preparation of such a document.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form, join, or assist General Teamsters Local Union 326 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

TRASH REMOVERS, INC.